

No. 10782

United States
Circuit Court of Appeals

For the Ninth Circuit.

13

UNITED STATES OF AMERICA,

Appellant,

VS.

HERMAN ROSENWASSER, an individual doing
business under the firm name and style of
Perfect Garment Company,

Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED

JUL 13 1944

PAUL P. O'BRIEN,
CLERK

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Circuit Court of Appeals
For the Ninth Circuit.

UNITED STATES OF AMERICA,
Appellant,
vs.

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

Page

Affidavit of Herman Rosenwasser in Support of Motion to Suppress	35
---	----

Appeal:

Assignment of Errors	43
Certificate of Clerk to Transcript of Rec- ord on	48
Citation on	2
Designation of Points on, and Transcript.	49
Notice of Service and Receipt	46
Order Allowing	42
Petition for	40
Praecipe	46
Assignment of Errors	43
Certificate of Clerk to Transcript of Record on Appeal	48
Citation	2
Designation of Points on Appeal and Tran- script	49
Docket Entries	3

Information	5
Minute Orders:	
January 25, 1944—That Information be Filed and Defendant Released on His Own Recognizance	4
March 6, 1944—Hearing	38
Motion to Suppress	32
Names and Addresses of Attorneys	1
Notice of Service and Receipt	46
Order Allowing Appeal	42
Order to Suppress Evidence	39
Petition for Appeal	40
Praecipe	46

NAMES AND ADDRESSES OF ATTORNEYS:

For Appellant:

CHARLES H. CARR,

United States Attorney,

V. P. LUCAS,

Assistant United States Attorney,

600 U. S. Post Office and Court House
Bldg., Los Angeles 12, Calif.

For Appellee:

BERNARD B. LAVEN,

608 S. Hill St., Los Angeles 14, Calif. [1*]

*Page numbering appearing at foot of page of original certified Transcript of Record.

In the District Court of the United States in and
for the Southern District of California, Central
Division.

No. 16564 Cr.

UNITED STATES OF AMERICA,

Appellant,

v.

HERMAN ROSENWASSER, an individual doing
business under the firm name and style of
PERFECT GARMENT COMPANY,

Appellee.

CITATION

United States of America—ss.

To: Herman Rosenwasser, an individual doing
business under the firm name and style of Perfect
Garment Company.

Greetings:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, at San Francisco, Cali-
fornia, within forty (40) days from the date hereof,
pursuant to an appeal duly allowed and filed in the
office of the Clerk of the District Court of the
United States, for the Southern District of Cali-
fornia, Central Division, wherein the United States
of America is the Appellant and you are the Ap-
pellee, to show cause, if any there be, why the judg-
ment and order made and entered by the District
Court on the 27th day of March, 1944, suppressing
the evidence and ordering the return thereof should

not be corrected, and why speedy justice should not be done to the parties in that [3] behalf.

Witness: The Honorable Peirson M. Hall, United States District Judge for the Southern District of California, Central Division, on the 25th day of April, 1944.

PEIRSON M. HALL,
United States District Judge,
Southern District of Cali-
fornia, Central Division.

Service of the above citation is hereby acknowl-
edged this 2nd day of May, 1944.

BERNARD B. LAVEN
Attorney for Appellee.

[Endorsed]: Filed May 3, 1944. [4]

[Title of District Court and Cause.]

DOCKET ENTRIES

1-25-44 Ent. ord. filing & fld. Info. & releasg. deft
O.R.

* * *

3- 3-44 Fld. mot. to quash inform., demurrer, mot.
to suppress & affid. of deft. in supp. of mot.
to suppress.

* * *

3- 6-44 Ent. fur procs. hrg. on deft's mot. to sup-
press & ent. ord. grantg. & ent. fur. ord.
that hrg. on deft's. plea of former jeop-
ardy, deft's mot. to quash ea. & every et. &

demurrer be cont. to 3-27-44 at 10 A.M. &
cont. to said date for entry of plea. [5]

* * *

At a stated term, to-wit: The September Term, A. D. 1943, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Tuesday the 25th day of January in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable J. F. T. O'Connor, District Judge.

[Title of Cause.]

No. 16,564—Crim.

ORDER THAT INFORMATION BE FILED
AND DEFENDANT RELEASED ON HIS
OWN RECOGNIZANCE

On motion of Ray H. Kinnison, Esq., Assistant U. S. Attorney, appearing for the Government, who presents an Information to the Court in this cause, it is ordered that the said Information be filed and that the defendant, Herman Rosenwasser, doing business under the firm name and style of Perfect Garment Co., be, and he hereby is, released on his own recognizance. [6]

[Title of District Court and Cause.]

INFORMATION

Violations of 29 U.S.C.A. Sections 15(a)(1), 15(a)(2) and 15(a)(5), Fair Labor Standards Act of 1938.

Count One

Charles H. Carr, United States Attorney in and for the Southern District of California, who for the United States in this behalf prosecutes in his own proper person, and with leave of court first had and obtained, gives the court here to understand and to be informed as follows, to-wit:

1. That Herman Rosenwasser of the City of Los Angeles, Los Angeles County, California, within the Central Division of the Southern District of California, the defendant herein, is, and at all times hereinafter referred to, was the sole owner and operator of a place of business and manufacturing plant which he operates under the fictitious firm name of Perfect Garment Company;

2. That the defendant Herman Rosenwasser is, and at all times hereinafter referred to, was engaged under the fictitious firm name and style of Perfect Garment Company in the business of producing men's and women's coats and suits and Army and Navy Officers' uniforms; that in the course of said business he procures and obtains raw materials, manufactures and produces therefrom men's and women's coats and suits and Army and Navy Officers' uniforms and sells and ships such garments;

3. That the defendant Herman Rosenwasser is, and at all times hereinafter referred to, was in charge of the aforesaid manufacture and production operations conducted by him and engaged in the supervision and [7] direction of all employees employed by him;

4. That the defendant Herman Rosenwasser is and at all times hereinafter referred to was, an employer within the meaning of and subject to the provisions of the Fair Labor Standards Act of 1938; that the men's and women's coats and suits and Army and Navy officers' uniforms manufactured and produced by the defendant Herman Rosenwasser were, at all times hereinafter referred to, manufactured and produced by him with the intent on the part of the said defendant Herman Rosenwasser that all or some part of said goods would be sold, shipped, transported and delivered to customers at points outside the State of California; that a substantial portion of the said coats and suits and uniforms so produced were sold, shipped, transported and delivered to customers at points outside the State of California; that in producing the said coats, suits and uniforms the defendant Herman Rosenwasser produced goods for interstate commerce within the meaning of the Fair Labor Standards Act of 1938;

5. That the defendant Herman Rosenwasser, at all times hereinafter referred to, employed and permitted and suffered to work in the production of goods, to-wit: coats, suits and uniforms, as aforesaid, numerous persons who were employees within

the meaning of the Fair Labor Standards Act of 1938;

6. That a large proportion of the said employees was engaged, at all times hereinafter referred to, in the production of goods, to-wit: coats, suits and uniforms, for interstate commerce within the meaning of the Fair Labor Standards Act of 1938;

7. That on October 21, 1938, the duly appointed Administrator of the Wage and Hour Division of the United States Department of Labor, pursuant to the authority vested in him by Section 11(c) of the Fair Labor Standards Act of 1938, duly issued regulations on records to be kept by employers subject to any provision of the Fair Labor Standards Act of 1938; that the said regulations were published in the Federal Register of October 22, 1938, and are known as Title 29, Chapter V, Code of Federal Regulations, Part 516;

8. That the defendant Herman Rosenwasser employed, within the [8] meaning of the Fair Labor Standards Act of 1938, one Grace Walton during the workweek beginning April 5, 1942, and ending April 11, 1942, in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms, for interstate commerce, and the defendant Herman Rosenwasser on or about April 11, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Section

11(c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant Herman Rosenwasser did, on or about April 11, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, within the jurisdiction of this court, unlawfully and wilfully make and cause to be made on a time sheet of said defendant, Herman Rosenwasser, said time sheet bearing the name "Grace Walton" and the date "Apr-11-42", the following entries in a column entitled "Reg. Hrs", to-wit: opposite the word "Monday" "8"; opposite "Tuesday" "8"; opposite "Wednesday" "8"; opposite "Thursday" "8"; opposite "Friday" "8"; and opposite "total" "40"; which said entries purport to show and in substance and effect declare that the hours worked by the said Grace Walton during the workweek commencing April 5, 1942, and ending April 11, 1942, were 40, whereas in truth and in fact, as the defendant, Herman Rosenwasser, then and there well knew, the hours worked by said Grace Walton during said workweek were not 40 and in fact were 49;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [9]

Count Two

And the said United States Attorney, in the manner and form aforesaid, further informs the court that:

1. Each and every allegation contained in paragraphs 1 to 7 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Nadya Galloway, during the workweek beginning March 29, 1942, and ending April 4, 1942, in the production of goods, to-wit: men's and women's coats and suits and Army and Navy officers' uniforms, for interstate commerce, and the defendant, Herman Rosenwasser, on or about April 4, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Section 11(c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about April 4, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the

Southern District of California, within the jurisdiction of this Court, unlawfully and wilfully make and cause to be made on a time sheet of said defendant, Herman Rosenwasser, said time sheet bearing the name "Nadya Calloway" and the date "April 4, 1942," the following entries, to-wit: opposite "Monday"; after the word "In" "8", after the word "Out" "4", in a column entitled "Reg. Hrs." "7"; opposite "Tuesday"; after the word "In" "8", after the word "Out" "4", in the said column "7"; opposite "Wednesday"; after the word "In" "8", after the word "Out" "4", in the said column "7"; opposite "Thursday"; after the word "In" "8", after the word "Out" "4", in said column "7"; opposite "Friday"; after the word "in" "8", after the word "Out" "4", in said column "7"; opposite "Satur- [10] day"; after the word "In" "8", after the word "Out" "12", in said column "4"; and after the word "Total" "39"; which said entries purport to show and in substance and effect declare that the hours worked by said Nadya Calloway during the workweek commencing March 29, 1942, and ending April 4, 1942, were 39, whereas in truth and in fact, as defendant, Herman Rosenwasser, then and there well knew, the hours worked by said Nadya Calloway during said workweek were not 39 and in fact were 45;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [11]

Count III

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 7 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Lukena Patella, during the workweek beginning April 12, 1942, and ending April 18, 1942, in the production of goods, to-wit: men's and women's coats and suits and Army and Navy officers' uniforms, for interstate commerce, and that the defendant, Herman Rosenwasser, on or about April 17, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Section 11(c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about April 17, 1942, in the City of Los Angeles, County of Los Angeles, within

the Central Division of the Southern District of California, within the jurisdiction of this Court, unlawfully and wilfully make and cause to be made on a time sheet of said defendant, Herman Rosenwasser, said sheet bearing the name "Lukena Patella" and the date "April 17, 1942," the following entries, to-wit: opposite "Monday", after the word "In" "8:00", after the word "Out" "5:00", in a column entitled "Reg. Hrs." "8"; opposite "Tuesday": after the word "In" "8.00", after the word "Out" "5:00", and in said column "8"; opposite "Wednesday": after the word "In" "8:00", after the word "Out" "4:30", in said column "8"; opposite "Thursday": after the word "In" "8:00", after the word "Out" "5:30", in said column "8"; opposite "Friday": after the word "In" "8:00", after the word "Out" [12] "5:00", in said column "8"; and opposite the word "Total" "40": which said entries purport to show and in substance and effect declare that the hours worked by said Lukena Patella during the workweek commencing April 12, 1942, and ending April 18, 1942, were 40, whereas in truth and in fact, as defendant, Herman Rosenwasser then and there well knew the hours worked by said Lukena Patella during the said workweek were not 40 and in fact were $42\frac{1}{2}$;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [13]

Count Four

And the said United States Attorney, in the manner and form aforesaid, further informs the Court: that:

1. Each and every allegation contained in paragraphs 1 to 7 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Jennie Green, during the workweek beginning September 13, 1942, and ending September 19, 1942, in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms, for interstate commerce, and that the defendant, Herman Rosenwasser, on or about September 18, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Section 11(c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about September 18, 1942, in the City of Los

Angeles, County of Los Angeles, within the Central Division of the Southern District of California, within the jurisdiction of this Court, unlawfully and wilfully make and cause to be made on a time sheet of the said defendant, Herman Rosenwasser, said sheet bearing the name "Jennie Green" and the date "9/18/42", the following entries, to-wit: opposite "Monday"; after the word "In" "8", after the word "Out" "4:30"; opposite "Tuesday": after the word "In" "8", after the word "Out" "4:30": opposite "Wednesday": after the word "In"; "8", after the word "Out" "4:30"; opposite "Thursday": after the word "In" "8", after the word "Out" "4:30"; opposite "Friday": after the word "In" "8", after the word "Out" "4:30"; which said entries purport to show and in substance and [14] effect declare that said Jennie Green, during the workweek commencing September 13, 1942, and ending September 19, 1942, did not work on Saturday, September 19, 1942, whereas in truth and in fact as defendant, Herman Rosenwasser, then and there well knew, said Jennie Green did work on Saturday, September 19, 1943, and that the total hours worked by said Jennie Green in said workweek were in excess of those recorded by the defendant as having been worked by said Jennie Green.

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [15]

Count V

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 7, inclusive, of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full.

2. That the defendant, Herman Rosenwasser, employed within the meaning of the Fair Labor Standards Act of 1938, one Joseph Krayner during the workweek beginning October 4, 1942, and ending October 10, 1942, in the production of goods, to-wit: men's and women's coats and suits and Army and Navy officers' uniforms, for interstate commerce, and that the defendant, Herman Rosenwasser, on or about October 9, 1942, in the City of Los Angeles, Los Angeles County, within the Central Division of the Southern District of California, within the jurisdiction of this Court, did unlawfully and wilfully make and cause to be made a record required by and kept pursuant to the provisions of Sec. 11(c) of the Fair Labor Standards Act of 1938, and the regulations duly issued thereunder, hereinabove referred to and known as Title 29, Chapter V, Code of Federal Regulations, Part 516, then and there knowing such record to be false in a material respect; that is to say, the defendant, Herman Rosenwasser, did, on or about October 9, 1942, in the City of Los Angeles, County of Los Angeles,

within the Central Division of the Southern District of California, within the jurisdiction of this Court, unlawfully and wilfully make and cause to be made on a time sheet of said defendant, Herman Rosenwasser, said time sheet bearing the name "Joseph Krayner" and the date "Oct. 9" 1942, the following entries, to-wit: opposite "Monday": after "In" "8", after the word "Out" "4:30", in a column entitled "Reg. Hrs." "8"; opposite "Tuesday": after "In" "8", after the word "Out" "5", in said column "8"; opposite "Wednesday": after "In" "8", after the word "Out" "4:30", in said column "8"; opposite "Thursday": after "In" "8", after the word "Out" "4:30", in said column "8"; opposite "Friday": after "In" "8"; after the word "Out" "5:30", in said column "8"; and after the word "Total" [16] "40"; which said entries purport to show and in substance and effect declare that the hours worked by said Joseph Krayner during said workweek commencing October 4, 1942, and ending October 10, 1942, were 40, whereas in truth and in fact, as defendant, Herman Rosenwasser, then and there well know, the hours worked by the said Joseph Krayner were not 40 and in fact were 41 1/2:

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [17]

Count VI

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That on May 15, 1940, the duly appointed Administrator of the Wage and Hour Division of the United States Department of Labor, pursuant to and in accordance with the authority conferred upon him by Sections 5 and 8 of the Fair Labor Standards Act of 1938, duly issued a Wage Order for the cloaks, suits, and separate skirts division of the apparel industry; that the said Wage Order was published in the Federal Register on May 17, 1940, and is known as Title 29, Chapter V, Code of Federal Regulations, Part 566; that the said Wage Order became effective on July 15, 1940, and has been at all times since said date, and is now, in full force and effect.

3. That the said Wage Order requires every employer to pay to each of his employees who is engaged in the production for interstate commerce, within the meaning of the Fair Labor Standards Act of 1938, of women's coats, suits and skirts, wages at a rate not less than forty cents (40c) an hour, from and after July 15, 1940;

4. That on May 15, 1940, the duly appointed Administrator of the Wage and Hour Division of the United States Department of Labor, pursuant to and in accordance with the authority conferred upon him by Sections 5 and 8 of the Fair Labor Standards Act of 1938, duly issued a Wage Order for the men's and boys' clothing division of the apparel industry; that the said Wage Order was published in the Federal Register on May 17, 1940, and is known as Title 29, Chapter V, Code of Federal Regulations, Part 559; that the said Wage Order became effective on July 15, 1940, and has been at all times since said date, and is now in full force and effect;

5. That the said Wage Order requires every employer to pay to each [18] of his employees who is engaged in the production for interstate commerce, within the meaning of the Fair Labor Standards Act of 1938, of men's and women's coats and suits and Army and Navy Officers' uniforms, wages at a rate not less than forty cents (40c) an hour, from and after July 15, 1940;

6. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to-wit: women's coats, suits and skirts and men's and boys' coats, suits and tailored uniforms for interstate commerce, one John M. Gomez, during the workweek beginning November 30,

1941, and ending December 6, 1941, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California and within the jurisdiction of this Court, did, on or about December 6, 1941, unlawfully and wilfully fail to pay to the said John M. Gomez wages at a rate not less than forty cents (40c) an hour for the said work so performed by him during the said workweek; that is to say, the defendant did, at the time and place aforesaid, pay to the said John M. Gomez wages at a rate less than forty cents (40c) an hour, to-wit: at the rate of thirty-three cents (33c) an hour for the said work so performed by him during the said workweek;

Against the peace and dignity of the United States of America and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [19]

Count VII

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this formation is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full.

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern Dis-

trict of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standard Act of 1938, employ in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one A. C. Schultz for a workweek longer than forty (40) hours, beginning September 14, 1941, and ending September 20, 1941, and the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about September 20, 1941, did unlawfully and wilfully fail to pay the said A. C. Schultz wages for the hours in excess of forty (40) worked by the said A. C. Schultz during the said workweek at a rate not less than one and one-half times the regular rate at which the said A. C. Schultz was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said A. C. Schultz for his employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which he was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [20]

Count VIII

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one Lukena Patella, for a workweek longer than forty (40) hours, beginning March 29, 1942, and ending April 4, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about April 4, 1942, did unlawfully and wilfully fail to pay to the said Lukena Patella wages for the hours in excess of forty (40) worked by the said Lukena Patella during the said workweek at a rate not less than one and one-half times the regular rate at which the said Lukena Patella was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Lu-

kena Patella for her employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which she was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [21]

Count IX

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one Grace Walton, for a workweek longer than forty (40) hours, beginning April 5, 1942, and ending April 11, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the

Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about April 11, 1942, did unlawfully and wilfully fail to pay to the said Grace Walton during the said workweek wages for the hours in excess of forty (40) worked by the said Grace Walton during the said workweek at a rate not less than one and one-half times the regular rate at which the said Grace Walton was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Grace Walton for her employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which she was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [22]

Count X

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles,

within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, as aforesaid, one Nathan Berger, for a workweek longer than forty (40) hours, beginning May 31, 1942, and ending June 6, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about June 6, 1942, did unlawfully and wilfully fail to pay to the said Nathan Berger during the said workweek wages for the hours in excess of forty (40) worked by the said Nathan Berger during the said workweek at a rate not less than one and one-half times the regular rate at which the said Nathan Berger was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation the said Nathan Berger for his employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which he was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [23]

Count XI

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, one Jennie Green for a workweek longer than forty (40) hours, beginning September 13, 1942, and ending September 19, 1942, and that the said defendant, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, on or about September 19, 1942, did unlawfully and wilfully fail to pay to the said Jennie Green during the said workweek wages for the hours in excess of forty (40) worked by the said Jennie Green during the said workweek at a rate not less than one and one-half times the regular rate at which said Jennie Green was employed; that is to say, the said defendant, did, at the time and place aforesaid, pay com-

pensation to the said Jennie Green for her employment in excess of forty (40) hours during the said workweek at a rate less than one and one-half times the regular rate at which she was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [24]

Count XII

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full:

2. That the defendant, Herman Rosenwasser, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, did, within the meaning of the Fair Labor Standards Act of 1938, employ in the production of goods, to-wit: men's and women's coats and suits and Army and Navy Officers' uniforms for interstate commerce, one Joseph Krayner, for a workweek longer than forty (40) hours, beginning October 4, 1942, and ending October 10, 1942, and that the said defendant in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within

the jurisdiction of this Court, on or about October 10, 1942, did unlawfully and wilfully fail to pay to the said Joseph Krayner during the said workweek wages for the hours in excess of forty (40) worked by the said Joseph Krayner during the said workweek at a rate not less than one and one-half times the regular rate at which the said Joseph Krayner was employed; that is to say, the said defendant did, at the time and place aforesaid, pay compensation to the said Joseph Krayner for his employment in excess of forty (40) hours during the said workweek at a rate of less than one and one-half the regular rate at which he was employed;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [25]

Count XIII

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, on or about April 7, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, unlawfully and wil-

fully sold, transported, shipped and delivered from a point within the State of California to a point outside the State of California, and in the State of Oregon, to-wit: coats and suits, identified by Invoice No. 1758, in the production of which defendant had employed employees for a workweek in excess of forty (40) hours, to whom said defendant failed to make compensation for their employment in excess of forty (40) hours in said workweek at a rate not less than one and one-half times the regular rate at which they were employed, and to whom the said defendant paid wages for the hours worked in excess of forty (40) in said workweek at a rate less than one and one-half times the regular rate at which they were employed, and in the production of which said defendant had employed employees to whom said defendant failed to pay wages at a rate not less than forty cents (40c) an hour and to whom defendant paid wages at a rate less than forty cents (40c) an hour;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [26]

Count XIV

And the United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count

and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, on or about June 9, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, unlawfully and wilfully sold, transported, shipped and delivered, from a point within the State of California, to a point outside the State of California, and in the State of Nevada, goods, to-wit: suits and coats and identified by Invoice No. 3262 in the production of which defendant had employed employees for a workweek in excess of forty (40) hours, to whom said defendant failed to make compensation for their employment in excess of forty (40) hours in said workweek at a rate not less than one and one-half times the regular rate at which they were employed, and to whom the said defendant paid wages for the hours worked in excess of forty (40) in said workweek at a rate less than one and one-half times the regular rate at which they were employed, and in the production of which the defendant had employed employees to whom said defendant failed to pay wages at a rate not less than forty cents (40c) an hour and to whom defendant paid wages at a rate less than forty cents (40c) an hour;

Against the peace and dignity of the United States of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.) [27]

Count XV

And the said United States Attorney, in the manner and form aforesaid, further informs the Court that:

1. Each and every allegation contained in paragraphs 1 to 6 inclusive of the First Count of this Information is hereby referred to and made a part of this count and incorporated by reference with the same force and effect as if here set forth in full;

2. That the defendant, Herman Rosenwasser, on or about October 10, 1942, in the City of Los Angeles, County of Los Angeles, within the Central Division of the Southern District of California, and within the jurisdiction of this Court, unlawfully and wilfully sold, transported, shipped and delivered, from a point within the State of California, to a point outside the State of California, and in the State of Texas, goods, to-wit: suits and coats identified by Invoice No. 3938 in the production of which defendant had employed employees for a workweek in excess of forty (40) hours, to whom said defendant failed to make compensation for their employment in excess of forty (40) hours in said workweek at a rate not less than one and one-half times the regular rate at which they were employed, and to whom the said defendant paid wages for the hours worked in excess of forty (40) in said workweek at a rate less than one and one-half times the regular rate at which they were employed, and in the production of which the said defendant had employed employees to whom said defendant failed to pay wages at a rate not less than forty

cents (40c) an hour and to whom defendant paid wages at a rate less than forty cents (40c) an hour;

Against the peace and dignity of the United states of America, and contrary to the form of the statute in such case made and provided. (Fair Labor Standards Act of 1938.)

Whereupon, the said Attorney for the United States prays that due process of law may be awarded against the said defendant to make him answer the premises aforesaid.

CHARLES H. CARR

United States Attorney

CHARLES H. VEALE

Assistant U. S. Attorney [28]

United States of America,
Southern District of California—ss.

Perry A. Bertram, Attorney, United States Department of Labor, being first duly sworn on his oath says: that he has read the foregoing Information and that the matters contained therein are true and correct to the best of his knowledge and belief.

PERRY A. BERTRAM

Subscribed and sworn to before me this 20th day of January, 1944.

[Seal] FLORENCE LEE MILLER

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires January 27, 1946.

[Endorsed]: Filed Jan. 25, 1944. [29]

[Title of District Court and Cause.]

MOTION TO SUPPRESS

To Charles H. Carr, United States Attorney:

Please notice that on the 6th day of March, 1944, or as soon thereafter as counsel can be heard, defendant Herman Rosenwasser, by his attorney, Bernard B. Laven, will move this Court at Los Angeles, California, for an Order directing that all property consisting of plaintiff's Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 14, and plaintiff's Exhibits for Identification, 4A, 5A, 12A 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30, in Case Number 16152 P.H., entitled United States of America vs. Herman Rosenwasser in the District Court of the United States, for the Central Division of the Southern District of the United States, be excluded as evidence upon the trial of the cause and that they be suppressed and returned to the defendant on the grounds that: [30]

I.

Said property was seized from the defendant, Herman Rosenwasser, on or about the 15th day of February, 1943, which was in possession and control of the defendant and belonged to and was owned by said defendant. That thereafter photostatic copies were made of said property. That his rights under the Fourth and Fifth Amendments to the Constitution of the United States were violated by said search and seizure, in that the same were obtained without a search warrant.

II.

The said seizure was further illegal for the reason that the provisions of the "Fair Labor Standards Act of 1938" or the Regulations thereto do not authorize, provide or permit the use of any documents, records, transcriptions thereof in Criminal prosecutions under said Act or Regulations thereof.

III.

Defendant is further informed and verily believes that the United States intends to use the photostats and transcriptions of said property so seized as the basis of the Criminal prosecution herein against the defendant on the trial of said Information in this cause.

Wherefore, defendant moves that an Order be entered herein, suppressing said Exhibits and each of them as evidence and excluding them at the trial of this cause.

BERNARD B. LAVEN

Attorney for Defendant [31]

United States of America

Southern District of California

Los Angeles County—ss.

Bernard B. Laven, being first duly sworn, deposes and says:

That he is the attorney for the defendant Herman Rosenwasser and that he has read the above and foregoing Motion and that the allegations with reference to the search and seizure are correct, according to his knowledge and believe.

BERNARD B. LAVEN

Subscribed and sworn to before me this 2nd day of March, 1944.

[Seal]

PEARL E. BLEWETT

Notary Public in and for the County of Los Angeles, State of California.

Whereas, the above matter has been continued to March 6, 1944, for plea the time to serve the within Notice is shortened so that service may be made before 5 P.M., March 3, 1944.

Dated this 3rd of March, 1944.

PIERSON M. HALL

Judge [32]

Points and Authorities

The Fourth Amendment forbids unreasonable searches and seizures by Federal Officers, and prevents the use of evidence procured thereby in a Criminal prosecution.

Olmstead vs. U. S., 277 U. S. 438 72 L. Ed. 944, 48 S. Ct. 564.

U. S. vs. Mettingly, 285 Fed. 922.

Boyd v. U. S., 116 U. S. 616-633 29 L. Ed. 746, 6 S. Ct. 524.

“We have already noticed the intimate relation between the two Amendments (speaking of the Fourth and Fifth). They throw great light on each other. For the “unreasonable searches and seizures” condemned in the Fourth Amendment and almost always made for the purpose of compelling a man to give evidence against himself, which in Criminal cases is condemned in the Fifth Amend-

ment; and compelling a man "in a criminal case to be a witness against himself which is condemned in the Fifth Amendment throws light on the question as to what is an unreasonable search and seizure within the meaning of the Fourth Amendment. And we have been unable to perceive that the seizure of a man's private books and papers to be used in evidence against him is substantially different from compelling him to be a witness against himself. We think it is within the clear intent and meaning of those terms."

Brown vs. U. S., 168 U. S. 532, 42 L. Ed. 568, 18 S. Ct. 183.

A peaceful submission reasonably attributable to a regard for authority of law is not a waiver.

[Endorsed]: Filed March 3, 1944. [33]

[Title of District Court and Cause.]

AFFIDAVIT OF HERMAN ROSENWASSER
IN SUPPORT OF MOTION TO SUPPRESS

United States of America
Southern District of California
County of Los Angeles—ss.

Herman Rosenwasser, being first duly sworn, deposes and says:

That he is the defendant in the above entitled cause;

That on or about the 15th day of February, 1943, at Los Angeles, California, at the defendant's place

of business, one Mary Wiatt Chase, of the Wage and Hour Division of the United States Department of Labor appeared with two men and without a search warrant, or any other process or writ of any kind or nature whatever, stated that she wanted the Social Security Records, Payroll Records and Checks, and Time Sheets of defendant's employees for the year of 1942; Piece Work tickets from April to [34] December, 1942, and all invoices of shipments of merchandise made by defendant, from February 1942 to December 31, 1942; that she had some more checking to do of defendant's records and could do it better at the Department's office, and that the Wage and Hour Law provided for such inspection; that she would give defendant a receipt for the said records and return them as soon as the department had made a further check. That thereupon the defendant delivered the records demanded for the purpose specified by Mary Wiatt Chase;

That the said property was his business records and private property and he would not have given them to the said Mary Wiatt Chase had he known or been informed by her or the two men accompanying her that photostatic copies were to be made of said records and the said photostats were going to be used against the defendant in a Criminal Proceeding or prosecution.

Wherefore, affiant prays that the Motion to Suppress the Evidence be granted.

HERMAN ROSENWASSER

Subscribed and sworn to before me this 2nd day of March, 1944.

[Seal] PEARL E. BLEWETT

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires February 21, 1948.

[Endorsed]: Filed March 3, 1944. [35]

At a stated term, to-wit: The February Term, A. D. 1944, of the District Court of the United States of America, within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday the 6th day of March in the year of our Lord one thousand nine hundred and forty-four.

Present: The Honorable Peirson M. Hall, District Judge.

[Title of Court.]

No. 16,564—Crim.

This cause coming on for hearing on defendant's plea of former jeopardy, filed February 23, 1944; hearing on defendant's motion for a Bill of Particulars, filed February 23, 1944; hearing on defendant's motion to quash each and every count, pursuant to notice filed March 3, 1944; hearing on demurrer to Information, pursuant to notice filed March 3, 1944, and hearing on defendant's motion to suppress, pursuant to notice filed March 3, 1944;

V. P. Lucas, Esq., Assistant U. S. Attorney, appearing for the Government; Bernard B. Laven, Esq., appearing for the defendant; M. A. Barr, Court Reporter, being present and reporting the proceedings; the defendant being present;

Attorney Laven argues in support of motion for Bill of Particulars, and at the suggestion of the Court counsel for defendant argues in support of defendant's motion to suppress evidence in the form of plaintiff's exhibits 1 to 12, inclusive, 14, 4A, 5A, and 13 to 30, inclusive, on the ground that said exhibits were obtained without a legal subpoena duces tecum, citing Sec. 49, pp. 401 and 411, U. S. Code.

Attorney Lucas now argues in opposition to said motion to suppress.

The motion to suppress the evidence is ordered granted and that said exhibits be returned.

The Court further states that the hearing on motion to quash and demurrer should be deferred until the decision is made on defendant's motion for Bill of Particulars. [36]

Attorney Lucas opposes motion for Bill of Particulars.

The Court orders motion for Bill of Particulars granted as to paragraph I and denied as to paragraph II.

It is further ordered that hearing on plea of former jeopardy, defendant's motion to quash each and every count, and demurrer be continued to March 27, 1944, at 10 A.M. [37]

In the District Court of the United States in and
for the Southern District of California, Central
Division

No. 16564

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HERMAN ROSENWASSER, an individual doing
business under the firm name and style of
PERFECT GARMENT COMPANY,

Defendant.

ORDER TO SUPPRESS EVIDENCE

This matter having regularly come before me, on
the 6th day of March, 1944, pursuant to a Notice of
Motion by the defendant, Herman Rosenwasser, to
Suppress Evidence, Charles H. Carr, United States
Attorney, appearing by V. P. Lucas, Assistant
United States Counsel for the United States of
America, and Bernard B. Laven, appearing as
counsel for the defendant, Herman Rosenwasser,
and the Court being fully advised in the premises,
and good cause appearing therefor:

It Is Hereby Ordered that the plaintiff's exhibits
and exhibits for identification in Case Number
16152, P.H. entitled United States of America vs.
Herman Rosenwasser in the above entitled Court,
be and they are hereby suppressed and that all in-
voices, records, bills, files and notations, and/or
photostats, copies, or data secured therefrom or in-
formation obtained therefrom directly or indirectly

[38] be and it is hereby forever suppressed and the United States of America, and/or its officers and agents are barred from using any such invoices, bills, records, data or information or any matter obtained therefrom directly or indirectly in any proceeding of any kind or character whatsoever against this defendant; and,

It Is Further Ordered, Adjudged, and Decreed:

That the officers and agents of the United States Department of Labor, Wage and Hour Division thereof, and/or any other person obtaining information or data therefrom or any copies thereof, no matter in what form, must return the same forthwith to the defendant Herman Rosenwasser.

Dated this 27th day of March, 1944.

PEIRSON M. HALL

Judge

Received Copy of the Within this 27 day of Mar., 1944.

V. P. LUCAS

[Endorsed]: Filed Mar. 27, 1944. [39]

[Title of District Court and Cause.]

PETITION FOR APPEAL

To: Honorable Peirson M. Hall, Judge of said Court.

Now Comes your petitioner, United States of America, plaintiff in the above-entitled cause, by

Charles H. Carr, United States Attorney for the Southern District of California, its attorney, and shows to the Court that heretofore, to-wit on March 6, 1944, the District Court of the United States for the Southern District of California, Central Division, made an order sustaining defendant's Motion to Suppress Evidence, and thereafter and on March 27, 1944, signed a formal order suppressing said evidence and ordering the return thereof to the defendant; and your petitioner further shows to the court that said defendant has not been by the said decision and judgment of said Court, and has not been, in and by said proceedings in said cause, put in jeopardy, but that by the sustaining of defendant's demurrer on March 27, 1944, and the formal order thereafter on April 11, 1944, [40] and the said order granting the motion to suppress the evidence is in legal effect a final order, all of which will more fully appear from the records of this court in the office of the Clerk of this Court.

Your petitioner further represents that the action taken by said court in suppressing the evidence and ordering the return thereof is error and is not supported by the record in said cause and proceedings and that manifest and prejudicial error has intervened to the damage of your petitioner by reason thereof, as will more fully appear in the within Assignment of Errors which is presented and filed herewith and considered a part hereof.

Wherefore, and to the end that said error may be corrected, your petitioner prays an appeal in said cause from the District Court of the United States

for the Southern District of California to the Circuit Court of Appeals of the United States, Ninth Circuit, as by law provided; that citation be issued as provided by law and a transcript of the record, proceedings and documents, upon which said action was taken by said court, duly authenticated, be sent to the Circuit Court of Appeals for the Ninth Circuit, under the rules of said court in such cases made and provided.

Your petitioner further prays that pursuant to Statute in such cases made and provided, no bond or surety be required of it.

CHARLES H. CARR

United States Attorney, for
the Southern District of
California.

Attorney for the United States
of America, Appellant.

[Endorsed]: Filed Apr. 25, 1944. [41]

[Title of District Court and Cause.]

ORDER ALLOWING APPEAL

Now on this 24th day of April, 1944, there is presented to the Court the petition of plaintiff, United States of America, praying for an appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit, and it appearing to the Court that there has been filed with said petition for an appeal an Assignment of Error, setting forth

separately and particularly each error asserted and intended to be urged:

It Is Therefore Ordered by the Court that an appeal be and the same is hereby allowed said plaintiff, United States of America, as provided by law, to the United States Circuit Court of Appeals for the Ninth Circuit, to review the decision, proceedings, and the judgment and action taken by the Court in this case wherein the Court granted the motion to defendant to suppress and return the evidence; that citation be issued as provided by law; that a full transcript of the proceedings in this case be, by the Clerk of this Court, [42] presented and filed with the Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, and that pursuant to Statute in such cases made and provided, no supersedeas bond or cost bond or surety for the same need be filed herein by plaintiff, United States of America.

Dated: Los Angeles, California, this 24th day of April, 1944.

PEIRSON M. HALL

United States District Judge.

[Endorsed]: Filed Apr. 25, 1944. [43]

[Title of District Court and Cause.]

ASSIGNMENT OF ERRORS

Comes Now the United States of America by Charles H. Carr, United States Attorney for the

Southern District of California, its Attorney, and having made and filed its Notice of Appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the Orders and Judgment entered in the above-entitled cause against it on the 6th and 27th days of March, 1944, now makes and files with the Notice of Appeal the following Assignment of Errors herein upon which it will apply for reversal of the said Order and Judgment and each of them upon appeal, and which errors and each of them are to the great detriment, prejudice and injury of said appellant, in violation of the rights conferred upon it by law, and said appellant says that in the record, proceedings, rulings, orders and judgment, in the above-entitled cause and the determination thereof in the Central Division of the United States District Court in and for the Southern District of California, manifest error has intervened to [44] its prejudice, namely:

(1) The Court erred in granting the motion of defendant to suppress and return the exhibits for the reason that the said exhibits had been previously offered in evidence and admitted in the trial of Case No. 16152, *United States v. Herman Rosenwasser*, and were no longer in the possession of the United States Attorney's office and therefore the United States Attorney had no power to return the evidence to the defendant.

(2) The Court erred in making and entering the order suppressing the evidence and ordering the return thereof for the reason that the admissibility of said evidence had been determined in the previ-

ous trial of the case and the question of its admissibility was therefore *res adjudicata* and became the law of the case.

(3) The Court erred in granting the Motion to Suppress and ordering the return of the evidence for the reason that the affidavit in support of said motion did not show an illegal or unreasonable search and seizure or any search and seizure at all, but affirmatively showed the voluntary surrender by the defendant of the records requested of him by the investigating officers of the Wage and Hours Division of the Department of Labor.

(4) The Court erred in directing the transfer to defendant of the photostatic copies of said exhibits for the reason that the said photostatic copies were the property of the United States and had never been the property of the defendant. [45]

(5) The Court erred in permanently enjoining the representatives of the United States Government and in particular the Wage and Hours Division thereof, from making any use of the photostats or information derived therefrom in any other proceeding whatever either civil or criminal thereby converting a motion to suppress into an independent bill in equity, and making a final order therein.

CHARLES H. CARR

United States Attorney for
the Southern District of
California

Attorney for the United States
of America, Appellant

[Endorsed]: Filed May 20, 1944. [46]

[Title of District Court and Cause.]

NOTICE OF SERVICE AND RECEIPT

To: Herman Rosenwasser, an individual doing business under the firm name and style of Perfect Garment Company:

Pursuant to rules of Court and practice, you are hereby served with copies of petition for appeal, order allowing appeal, assignment or error, notice of appeal and citation in the above-entitled cause.

CHARLES H. CARR

United States Attorney for
the Southern District of
California.

Attorney for the Appellant

Service is acknowledged this 2nd day of May, 1944.

BERNARD B. LAVEN

Counsel for the Appellee

[Endorsed]: Filed May 3, 1944. [47]

[Title of District Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD

To the Clerk, District Court of the United States for the Southern District of California, Central Division:

The appellant, the United States of America, hereby directs that in preparing the transcript of

the record in this cause in the District Court of the United States for the Southern District of California, Central Division, you include the following:

1. Docket entries and minute entries showing filing of the information, the filing of the notice of motion to suppress the evidence, the demurrer to the information, the order granting the motion to suppress the evidence and return thereof.

2. The information.

3. The affidavit of Herman Rosenwasser in support of motion to suppress.

4. The Motion to suppress the evidence.

5. The order to suppress the evidence. [48]

6. The minute order of March 6th, 1944, granting the motion to suppress the evidence.

7. The written order dated March 27, 1944, signed by the Judge, suppressing the evidence.

8. The Petition for appeal to the Circuit Court of Appeals for the Ninth Circuit.

9. Statement as to the jurisdiction of the Circuit Court of Appeals for the Ninth Circuit Court of Appeals.

10. Assignment of errors.

11. The order allowing appeal.

12. The notice of service on the Appellee of the petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.

13. The citation.

14. The praecipe.

CHAS. H. CARR

United States Attorney for
the Southern District of
California

Service of the foregoing Praecipe for Transcript of Record is acknowledged this 2nd day of May, 1944.

BERNARD B. LAVEN

Counsel for Appellee

[Endorsed]: Filed May 3, 1944. [49]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 49 inclusive contain the original Citation and full, true and correct copies of: A Portion of the Docket Entries; Minute Order Entered January 25, 1944; Information; Motion to Suppress; Affidavit of Herman Rosenwasser in Support of Motion to Suppress; Minute Order Entered March 6, 1944; Order to Suppress Evidence; Petition for Appeal; Order Allowing Appeal; Assignment of Errors; Notice of Service and Receipt; and Praecipe for Transcript of Record which constitute the record on appeal to the Circuit Court of Appeals for the Ninth Circuit.

Witness my hand and the seal of said District Court this 24 day of May, 1944.

[Seal]

EDMUND L. SMITH,

Clerk,

By THEODORE HOCKE,

Deputy Clerk.

[Endorsed]: No. 10782. United States Circuit Court of Appeals for the Ninth Circuit. United States of America, Appellant, vs. Herman Rosenwasser, an individual doing business under the firm name and style of Perfect Garment Company, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed May 25, 1944.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 10782 Cr.

UNITED STATES OF AMERICA,

Appellant,

v.

HERMAN ROSENWASSER, an individual doing
business under the firm name and style of
PERFECT GARMENT COMPANY,

Appellee.

DESIGNATION OF POINTS ON APPEAL
AND TRANSCRIPT

To: The Clerk of the United States Circuit
Court of Appeals, for the Ninth Circuit:

In conformity with Rule 19, sub-division 6, the Appellant hereby adopts the Assignment of Errors appearing in the transcript of record as its points on appeal and designates for printing the entire transcript.

Dated: May 30, 1944.

CHARLES H. CARR,

United States Attorney.

JAMES M. CARTER,

Assistant U. S. Attorney.

V. P. LUCAS,

Assistant U. S. Attorney.

Attorneys for Appellant.

(Affidavit of Service by Mail.)

[Endorsed]: Filed June 2, 1944. Paul P. O'Brien, Clerk.